

**DECLARATION AND POWER OF ATTORNEY- USA PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled GENES IDENTIFIED AS REQUIRED FOR PROLIFERATION IN ESCHERICHIA COLI; the specification of which was filed on **January 27, 2999** as Application Serial No. **09/492,709**.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above;

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56;

I hereby claim the benefit under Title 35, United States Codes § 119(e) of any United States provisional application(s) listed below.

Prior U.S.A. Provisional Application(s)

Application No.: **60/117,405** Filing Date: **01/27/99** Status: **Abandoned**

POWER OF ATTORNEY: I hereby appoint the registrants of Knobbe, Martens, Olson & Bear, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, **Customer No. 20,995**.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: **Judith Zyskind**

Inventor's signature:

Date:

Residence: **8514 La Jolla Scenic Drive, La Jolla, CA 92037**

Citizenship: **U.S.A.**

Page 2

Attorney's Docket No. ELITRA.001A

Full name of second inventor: **Kari L. Ohlsen**Inventor's signature Kari OhDate May 12, 2000Residence: **3560 Vista De La Orilla, San Diego, CA 92117**Citizenship: **U.S.A.**Full name of third inventor: **John Trawick**Inventor's signature John TrawickDate 12 May 2000Residence: **7975 Michelle Dr., La Mesa, CA 91942**Citizenship: **U.S.A.**Full name of fourth inventor: **R. Allyn Forsyth**Inventor's signature R. Allyn ForsythDate May 12, 2000Residence: **1135 Beryl Street, San Diego, CA 92109**Citizenship: **U.S.A.**Full name of fifth inventor: **Jamie M. Froelich**Inventor's signature Jamie M. FroelichDate May 15, 2000Residence: **5057 35th Street, San Diego, CA 92116**Citizenship: **U.S.A.**

Page 3

Attorney's Docket No. ELITRA.001A

Full name of sixth inventor: **Grant J. Carr**

Inventor's signature Grant J. Carr

Date 5-12-2000

Residence: **2210 Sonrise Glen, Escondido, CA 92029**

Citizenship: **U.S.A.**

Full name of seventh inventor: **Robert T. Yamamoto**

Inventor's signature Robert T. Yamamoto

Date 5/12/00

Residence: **3725 Notre Dame Avenue, San Diego, CA 92122**

Citizenship: **U.S.A.**

Full name of eighth inventor: **H. Howard Xu**

Inventor's signature Kee Hao

Date 5/12/00

Residence: **11142 Ivy Hill Drive, San Diego, CA 92131**

Citizenship: **U.S.A.**

Send Correspondence To:

KNOBBE, MARTENS, OLSON & BEAR, LLP

Customer No. 20,995

Applicant or Patentee: Zyskind, et al.
Application or Patent No.: 09 492,709
Filed or Issued: January 27, 2000

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Attorney's Docket No.: ELITRA.001A
Page 1

For: **GENES IDENTIFIED AS REQUIRED FOR PROLIFERATION IN ESCHERICHIA COLI**

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL-ENTITY STATUS

I, the undersigned, do hereby declare that:

I am an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: Elitra Pharmaceuticals Inc.

ADDRESS OF CONCERN: 3510 Dunhill Street, Suite A, San Diego, CA 92121

I further declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. I further declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention described in the patent or application identified above.

The individual, concern or organization identified above has not assigned, granted, conveyed or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small-entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING: J. Gordon Foulkes

TITLE OF PERSON (if not an owner or individual): Executive Vice President, Research and Development

ADDRESS OF PERSON SIGNING: 3510 Dunhill Street, Suite A, San Diego, CA 92121

SIGNATURE: 

DATE: May 16 . 00